



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

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*271 Cadman Plaza East  
Brooklyn, New York 11201*

November 3, 2021

***VIA ECF***

Honorable Sanket J. Bulsara  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: *Erick Diaz Cruz v. United States of America and Henry V. Santana*  
Case No.: 20-CV-891 (EK) (SJB)

Dear Judge Bulsara:

This Office represents Defendant United States of America in the above-referenced action. The United States writes in compliance with the Court's September 20, 2021 Order, staying discovery in this action and directing the government to the Court on the status of a pending criminal investigation concerning the facts underlying this case.

By way of background, Plaintiff Erick Diaz Cruz commenced this action on February 20, 2020, against Immigration and Customs Enforcement ("ICE") Officer Henry V. Santana ("Co-Defendant"), asserting claims pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Plaintiff alleges that Co-Defendant is individually liable for Constitutional violations stemming from a February 6, 2020 incident in which Co-Defendant shot Plaintiff. See Dkt. No. 1. On April 20, 2021, Plaintiff filed an Amended Complaint asserting claims against the United States arising from the same shooting. See Dkt. No. 29 ("Amended Complaint"). Plaintiff brings his claims against the United States pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680.

On August 24, 2021, the United States filed a renewed request for a stay of its response to the Amended Complaint, as well as its response to discovery requests from the other parties. See Dkt. No. 42. The United States requested the stay because the Department of Homeland Security's Office of the Inspector General ("DHS OIG") is currently working with the Criminal Division of the U.S. Attorney's Office, Eastern District of New York ("Criminal Division"), investigating the shooting underlying this civil action.

Both DHS OIG and the Criminal Division continue to work together to complete the investigation, including reviewing documents and interviewing witnesses. Because the criminal investigation is ongoing, the United States requests that the stay be continued and that the government submit an additional status update on or before December 20, 2021, pursuant to the Court's Order requiring an update every 45 days.

The government thanks the Court for considering this request.

Respectfully submitted,

BREON PEACE  
UNITED STATES ATTORNEY

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